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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,856	03/05/2002	Mark S. Leung	12361-8US	8363
20988	7590	09/01/2004	EXAMINER	
OGILVY RENAULT 1981 MCGILL COLLEGE AVENUE SUITE 1600 MONTREAL, QC H3A2Y3 CANADA			ROANE, AARON F	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 09/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/087,856	Applicant(s) LEUNG ET AL.	
	Examiner Aaron Roane	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 July 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 and 14-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-11 is/are rejected.
- 7) ☒ Claim(s) 12 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/31/2002</u> | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election of invention II (claims 7-13) in the reply filed on 7/9/2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilcullen (USPN 5,456,704) in view of Yeager et al. (USPN 6,119,855).

Regarding claim 7, Kilcullen discloses a cushion adapted to release therapeutic vapors, said cushion comprising: a vapor permeable cover (41), said vapor permeable cover

enclosing an inner space and having an outer surface, said vapor permeable cover being permeable to microwaves, an absorbent material (39) positioned within said inner space, said absorbent material being capable of water uptake at ambient temperatures and water vapor release upon application of energy to said cellulose-containing absorbent material, and a vapor permeable pouch (10) connected to said vapor permeable cover, said vapor permeable pouch having a surface configured for receiving solid or liquid vapor therapy materials (contents of 36 and 38), said vapor permeable pouch being permeable to water vapor released through said vapor permeable cover into said vapor permeable pouch and adapted for releasing said vapor therapy materials in a gaseous therapeutic vapor, see col. 3 and 4 and figures 1-6. Kilcullen fails to disclose that the absorbent material contains cellulose. Yeager et al. disclose a storage bag with moisture emitting pad and teach that it is well known in the art to provide hydrated absorbent pads formed from cellulose materials in order to provide moisture, see col. 4, lines 45-52. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Kilcullen, as is well known in the art and taught by Yeager et al., to provide hydrated absorbent pads formed from cellulose materials in order to provide moisture.

Regarding claims 8 and 9, Kilcullen discloses that both the cover and pouch are comprised of a porous textile fabric, see col. 3, lines 56-59 and col. 4, lines 41-47.

Regarding claim 10, Kilcullen further discloses that the vapor permeable pouch is releasably connected to said outer surface of said vapor permeable cover, see figures 1-3.

Regarding claim 11, Kilcullen further discloses a fastener, said fastener having a first component (bonded seams 14, 16, 24 and 26) configured for attachment to said vapor permeable pouch and a second component (open end or orifice at 14 accommodating 45 and open end or orifice at 16 accommodating 43) configured for attachment to said outer surface of said cover, said first component and said second component being adapted to interconnect in mating said vapor permeable pouch to said vapor permeable cover, said first and said second components being capable of selective disengagement.

***Allowable Subject Matter***

Claims 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (703) 305-7377. The examiner can normally be reached on 9am - 5pm, Monday - Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.R. *A.R.*  
August 26, 2004

*Roy D. Gibson*  
ROY D. GIBSON  
PRIMARY EXAMINER